

FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

JAN 10 2006

CIVIL ACTION
CASE NO.

06 0105

JAMES M. MALONEY (JM-5297)
Attorney for Defendant
33 Bayview Avenue
Port Washington, New York 11060
Telephone: (516) 767-1395

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
GOWANUS INDUSTRIAL PARK, INC.,

Plaintiff,

- against -

ARTHUR H. SULZER ASSOCIATES, INC.,

Defendant.
-----X

NOTICE OF REMOVAL

Supreme Court, Kings County
Index No. 36786/05

JOHNSON, J

AZRACK, J.

PLEASE TAKE NOTICE that the undersigned hereby removes this action to the United States District Court, Eastern District of New York, United States Courthouse, 225 Cadman Plaza East, Brooklyn, NY 11201, pursuant to 28 U.S.C. §1441, from the Supreme Court of the State of New York, Kings County, on the following grounds:

(1) that this Court has original jurisdiction of the matter in that it appears, based on the allegations made in the Complaint, to be an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure; and (in the alternative)

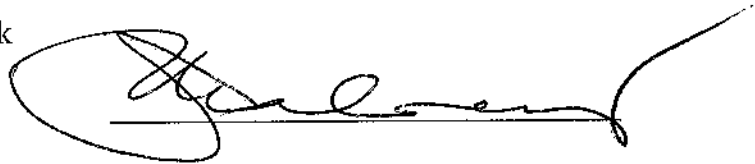
(2) that this Court has original jurisdiction of the matter based on the diversity of citizenship of the parties, in that the Plaintiff, GOWANUS INDUSTRIAL PARK, INC., claims at paragraph 1 of the Complaint to be a corporation organized under the laws of New York, with its principal place of business at 699 Columbia Street, Brooklyn, New York, and the Defendant, ARTHUR H. SULZER ASSOCIATES, INC., is a corporation organized under the laws of

Pennsylvania, with its principal place of business at 688 Beatty Road, Springfield, Pennsylvania, and with no office or place of business in the State of New York or in the District.

The cause of action arises out of alleged maritime liens and/or other claims for necessities and services provided to a vessel of which Defendant was the registered owner and of which a third entity (a discharged debtor in bankruptcy and not a party to this action) was the owner *pro hac vice* under a demise or bareboat charter.

On or about December 6, 2005, the Summons and Complaint, true copies of which are annexed hereto, were filed in Supreme Court of the State of New York, County of Kings. The Defendant was served with same on or about December 21, 2005. This notice is timely pursuant to 28 U.S.C. §1446(b).

Dated: January 10, 2006
Port Washington, New York

A handwritten signature in black ink, appearing to read 'J. Maloney', is written over a horizontal line.

JAMES M. MALONEY (JM-5297)
Attorney for Defendant
33 Bayview Avenue
Port Washington, New York 11050
(516) 767-1395

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

GOWANUS INDUSTRIAL PARK, INC.,

Plaintiff,

-against-

ARTHUR H. SULZER ASSOCIATES, INC.,
Plaintiff resides at

Defendant.

Index No. 36786/05
Filed 12/5/05
Plaintiff designates Kings
County as the place of trial

The basis of the venue is
Plaintiff's residence
SUMMONS


699 Columbia Street
Brooklyn, New York
County of

To the above-named defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York), and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
November , 2005

Paykin Greenblatt
Lesser & Krieg LLP

By: 
Attorneys for Plaintiff
185 Madison Avenue
New York, New York 10016
(212) 725-4423

Defendant's address:
888 Beatty Road
Springfield, Pennsylvania 19064

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
GOWANUS INDUSTRIAL PARK, INC.,

Plaintiff,

-against-

ARTHUR H. SULZER ASSOCIATES, INC.

Defendant.
-----X

COMPLAINT

36786/2005

Plaintiff, by its attorneys, Paykin Groenblatt Lesser & Krieg LLP, for its
Complaint against the defendant, alleges as follows:

FIRST CAUSE OF ACTION

1. Plaintiff is a corporation organized under the laws of New York, with its principal place of business at 699 Columbia Street, Brooklyn, New York.
2. Upon information and belief, defendant Arthur H. Sulzer Associates Inc. ("Sulzer"), is a corporation organized under the laws of Pennsylvania.
3. This Court has personal jurisdiction over this action because it entered into contracts in the State of New York.

4. Upon information and belief, at all relevant times defendant was the owner of a vessel known as the Barge ADA.

5. Upon information and belief, at all relevant times before on or about October 16, 2003 CDS Marine Construction, Inc. was a corporation organized under the laws of New Jersey and was engaged in the business of marine repair and construction.

6. Upon information and belief, on or about May 30, 2002 defendant chartered the Barge ADA to CDS Marine Construction, Inc. ("CDS") pursuant to a charter party agreement.

7. In or about April, 2003, CDS entered into an agreement with the plaintiff to repair the dock and bulkhead facilities owned by plaintiff at 699 Columbia Street, Brooklyn, New York, on a body of navigable water known as the Henry Street Basin.

8. In or about April, 2003, CDS brought the Barge ADA to the Henry Street Basin to perform the work required by its agreement with the plaintiff.

9. In or about August of 2003, CDS abandoned the work at the plaintiff's property and abandoned the Barge ADA on the plaintiff's property.

10. On or about October 16, 2003, CDS filed a petition in bankruptcy in the Bankruptcy Court for the District of New Jersey (*In re CDS Marine Construction, Inc.*, case no. 03-44170-JHW).

11. Since on or about August 1, 2003, plaintiff has provided necessities to the Barge ADA within the meaning of 46 U.S.C. § 31342, including but not limited to dock space, the services of linesmen, and work, labor and materials for repairs ("Services").

12. On or about March 3, 2004 plaintiff notified defendant that plaintiff had incurred substantial expenses for the Services and that plaintiff would not release the Barge ADA until plaintiff received payment for the Services.

13. On or about May 14, 2004 plaintiff notified defendant that plaintiff would deem the Barge ADA to be abandoned unless defendant advised plaintiff of its intentions regarding the Barge ADA.

14. On or about May 19, 2004 defendant responded by instructing the plaintiff to continue to hold the Barge ADA.

15. Plaintiff has continued to provide Services to the Barge ADA to the present time, with the knowledge and consent of the defendant.

16. Plaintiff has provided defendant with regular invoices for the charges incurred by holding the Barge ADA.

17. The value of the Services rendered by the plaintiff to date is \$447,178.95.

18. By reason of the foregoing, plaintiff has been damaged in the amount of \$447,178.95.

SECOND CAUSE OF ACTION

19. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

20. Plaintiff is entitled to recover the value of the services rendered in *quantum meruit*.

WHEREFORE, plaintiff respectfully requests that the Court enter judgment as follows:

(a) on the first cause of action, damages in an amount to be determined by the Court, not less than \$447,178.95, with interest from August 1, 2003;

(b) on the second cause of action, damages in an amount to be determined by the Court, not less than \$447,178.95, with interest from August 1, 2003;

(c) Such further and different relief as the Court may deem just and proper.

Dated: New York, New York
November , 2005

Paydin Greenblatt Lesser & Krieg LLP

By: 

Attorneys for Plaintiff
185 Madison Avenue
New York, New York 10016
(212) 725-4423

TOTAL P. 08

PAYKIN GREENBLATT LESSER & KRIEG LLP

Index No.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

GOWANUS INDUSTRIAL PARK, INC.,

Plaintiff,

-against-

ARTHUR H. SULZER ASSOCIATES, INC.

Defendant

SUMMONS AND COMPLAINT

PAYKIN GREENBLATT LESSER & KRIEG LLP

Attorney(s) for

Office and Post Office Address, Telephone

185 MADISON AVENUE

10TH FLOOR

NEW YORK, NEW YORK 10016

(212) 725-4423

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Sir: Please take notice

☒ NOTICE OF ENTRYthat the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

20

☐ NOTICE OF SETTLEMENTthat an order
settlement to the HON.of which the within is a true copy will be presented for
one of the judgesof the within named Court, at
on the day of

20 at M.

Dated,

Yours, etc.

PAYKIN GREENBLATT LESSER & KRIEG LLP

Attorney(s) for

Office and Post Office Address

185 MADISON AVENUE

10TH FLOOR

NEW YORK, NEW YORK 10016

(212) 725-4423

To

Attorney(s) for